

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

GERALD D. HESTLE,

Petitioner, CASE NO.: 02-50030

v.

UNITED STATES OF AMERICA,

HONORABLE PAUL V. GADOLA  
U.S. DISTRICT JUDGE

Respondent.  
\_\_\_\_\_

**ORDER ACCEPTING AND ADOPTING THE  
MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

This is a habeas corpus action, brought pursuant to 28 U.S.C. § 2255. Before the Court is Petitioner's petition for a writ of habeas corpus, filed on August 1, 2005, and the Report and Recommendation of Magistrate Judge Steven D. Pepe, filed on May 30, 2007. The magistrate judge's Report and Recommendation recommends that this Court deny Petitioner's motion. The Magistrate Judge also notified the parties that any objections must be filed within ten days of service. After several stipulated orders allowing an extension of time to file objections, Petitioner filed timely objections on September 17, 2007. Respondent did not file a response.

The Court's standard of review for a magistrate judge's Report and Recommendation depends upon whether a party files objections. If a party does not object to the Report and Recommendation, the Court does not need to conduct a review by any standard. *See Lardie v. Birkett*, 221 F. Supp. 2d 806, 807 (E.D. Mich. 2002) (Gadola, J.). If a party does object to portions of the Report and Recommendation, the Court reviews those portions *de novo*. *Lardie*, 221 F. Supp. 2d at 807. The Federal Rules of Civil Procedure dictate this standard of review in Rule 72(b), which

states, in relevant part:

The district judge to whom the case is assigned shall make a *de novo* determination upon the record, or after additional evidence, or any portion of the magistrate judge's disposition to which specific written objection has been made in accordance with this rule. The district judge may accept, reject, or modify the recommended decision, receive further evidence, or recommit the matter to the magistrate judge with instructions.

Fed. R. Civ. P. 72(b).

Here, because Petitioner filed objections as to each claim presented, this Court reviews *de novo* those portions to which an objection has been made. *See Lardie*, 221 F. Supp. 2d at 807. *De novo* review in these circumstances requires at least a review of the evidence before the magistrate judge; the Court may not act solely on the basis of a magistrate judge's Report and Recommendation. *See* 12 Wright, Miller & Marcus, Federal Practice and Procedure: Civil 2d § 3070.2 (1997); *Hill v. Duriron Co.*, 656 F.2d 1208, 1215 (6th Cir. 1981). The Court may supplement the record by entertaining additional evidence, but is not required to do so. 12 Wright, Federal Practice § 3070.2. After reviewing the evidence, the Court is free to accept, reject, or modify the findings or recommendations of the magistrate judge. *See Lardie*, 221 F. Supp. 2d at 807. If the Court accepts a Report and Recommendation, the Court is not required to state with specificity what it reviewed; it is sufficient for the Court to state that it engaged in a *de novo* review of the record and adopts the Report and Recommendation. *See id*; 12 Wright, Federal Practice § 3070.2.

In the present case, because Petitioner has filed objections to the Report and Recommendation, the Court has conducted a *de novo* review as to those portions. The Court has

reviewed the claims and evidence that were before Magistrate Judge Steven D. Pepe and, after such a review, the Court finds that Report and Recommendation prepared by the magistrate judge is factually sound and legally correct.

**ACCORDINGLY, IT IS HEREBY ORDERED** that the Report and Recommendation [docket entry #98] is **ACCEPTED** and **ADOPTED** as the opinion of this Court.

**IT IS FURTHER ORDERED** that Petitioner's petition for writ of habeas corpus [docket entry #74] is **DENIED**.

**SO ORDERED.**

Dated: November 2, 2007

s/Paul V. Gadola  
HONORABLE PAUL V. GADOLA  
UNITED STATES DISTRICT JUDGE

Certificate of Service

I hereby certify that on November 2, 2007, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the following:

Mark C. Jones; David A. Koelzer, and I hereby certify that I have mailed by United States Postal Service the paper to the following non-ECF participants: \_\_\_\_\_.

s/Ruth A. Brissaud  
Ruth A. Brissaud, Case Manager  
(810) 341-7845